

UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF NORTH CAROLINA
Case Number 5:19-CR-22

UNITED STATES OF AMERICA)
)
 vs.)
)
JOHN D. GRAY)

)

MOTION TO CONTINUE TRIAL AND DOCKET CALL

NOW COME Defendant John D. Gray, by and through counsel, to move that trial in this matter be continued from the November 6, 2023 trial term to a peremptory trial setting in April, 2024 or to the first scheduled term thereafter. In support of his motion – made pursuant to 18 U.S.C. §3161(h)(7)(B)(iv) – the defendant shows unto the Court that:

1. John D. Gray is charged herein with honest services fraud and federal funds bribery. Co-Defendant Greg Lindberg is charged with the same offenses.

2. On March 3, 2020, a jury found both Mr. Gray and Mr. Lindberg each guilty on both counts.

3. In October, 2020, Defendant Gray's trial counsel was permitted to withdraw. Appellate counsel was appointed for him by the Court.

4. In June, 2022, the United States Court of Appeals for the Fourth Circuit vacated the convictions of both defendants and remanded for a new trial.

5. On December 16, 2022, attorneys with the Parker Poe Adams &

Bernstein firm entered appearances on behalf of Mr. Gray. The Parker Poe firm had represented a third co-defendant who was acquitted in the first trial.

6. In or about May, 2023, the United States requested that Parker Poe move this Court to consider, in an ex parte hearing, whether a conflict of interest existed regarding Parker Poe's successive representation of a defendant in the first trial and Defendant Gray in the retrial. A motion for a Garcia¹ hearing was filed and remains pending.

7. On March 10, 2023, this Court set trial herein for November 6, 2023.

8. On August 17, 2023, the Parker Poe attorneys moved to be relieved as counsel and to render the Garcia determination moot. The Court has postponed the Garcia hearing while the Court considered the Motion to Withdraw as Counsel.

9. On September 26, 2023, Sean Devereux, Devereux, Devereux & Banzhoff, Asheville, North Carolina; and Stephen Lacy Cash, Barbour, Searson, Jones & Cash, Asheville, North Carolina entered appearances for Defendant Gray.

10. Discovery for the initial trial was voluminous, including more than 80 hours of recorded conversations between the defendants and witnesses cooperating with the government. In December, 2022, the government provided six million pages of supplemental discovery in a related case involving Mr. Lindberg. It is unclear how much of the additional discovery counsel for Defendant Gray will be required to review prior to trial. Counsel, new to the case, will need time to review the discovery and discuss it with their client. Requiring Defendant Gray to be tried before April, 2024 will unreasonably deny him continuity of counsel and deny replacement counsel the reasonable time necessary for effective

¹United States v. Garcia, 517 F. 2d 272 (5th Cir. 1975),

preparation, taking into account the exercise of due diligence. 18 U.S.C. §3161(h)(7)(B)(iv).

11. Defense counsel have conferred with counsel for the United States and are informed that the government does not object to this motion and agrees to a trial date no sooner than April, 2024.

Respectfully submitted this 4th day of October, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing Notice of Appearance of Counsel was filed electronically with the Clerk of Court by means of the CM/ECF system and served on the attorneys of record via the Court's electronic case filing system.

This 4th day of October, 2023.

/s/ Sean Devereux
Sean Devereux